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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 344

STATE OF MAINE, STATE OF NEW HAMPSHIRE, STATE OF VERMONT, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION

HENRY E. FOLEY,
Counsel for Appellants.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF NEW YORK

Civil Action No. 2311

THE STATES OF NEW YORK, DELAWARE, INDIANA, MARYLAND, MICHIGAN, NEW JERSEY, OHIO, WISCONSIN, AND THE COMMONWEALTH OF PENNSYLVANIA,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 2337

THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO., ET AL.,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant

STATEMENT AS TO JURISDICTION UPON APPEAL

Pursuant to Paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States, The Honorable Horace A. Hildreth, Governor of the State of Maine; The Honorable Charles M. Dale, Governor of the State of New Hampshire; The Honorable Mortimer R. Proctor, Governor of

the State of Vermont; The Honorable Maurice J. Tobin, Governor of The Commonwealth of Massachusetts; The Honorable John O. Pastore, Governor of the State of Rhode Island; and The Honorable Raymond E. Baldwin, Governor of the State of Connecticut (hereinafter called your petitioners), interveners in the above-entitled consolidated proceedings, submit herewith their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction upon appeal to review the final decree and order entitled—Final Decree and Order Continuing Interlocutory Injunction—(Appendix C hereto)* made and entered by this Court on May 27, 1946, in the above-entitled proceedings. Your petitioners' petition for appeal was filed on June 25, 1946, and is presented to this Court herewith.

I

Jurisdiction

The jurisdiction of the Supreme Court of the United States to review, upon direct appeal, the final decree and order entered in these proceedings is conferred by Section 210 of the Judicial Code (United States Code, Title 28, Section 47a), which provides, in part, as follows:

> "A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law

*(CLERK'S NOTE.—The Opinion, Interlocutory Injunction, Final Decree and Order Continuing Interlocutory Injunction are printed as Appendices "A", "B" and "C" to the Jurisdictional Statement in No. 343 and are not reprinted here.)

> in equity cases. * * * The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title."

The above-entitled proceedings are cases specified in said section 44 of Title 28, within the meaning of the statute. That section provides in part as follows:

> "The procedure in the district courts * * * (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title." (38 Stat. 220)

Statutes or Treaties Involved

The validity of a statute of a State, or of a statute or treaty of the United States is not involved.

The construction of various provisions of the Interstate Commerce Act of February 4, 1887 (24 Stat. 379), as amended, is involved, however. These provisions include the declaration of national transportation policy contained in the preamble to the Act, which is, in part, as follows:

> "It is hereby declared to be the national transportation policy of the Congress * * * to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices * * *" (54 Stat. 899);

the provisions of Sections 1(4) and 1(5) of the Act (United States Code, Title 49, Sections 1(4) and 1(5)), requiring the establishment and maintenance of just and reasonable, and prohibiting unjust and unreasonable, rates, fares and charges for railway transportation; the provisions of Sec-

tion 3(1) of the Act (United States Code, Title 49, Section 3(1)) forbidding undue preference or advantage in favor of and undue prejudice or disadvantage against any "particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory or any particular description of traffic"; and the provisions of Section 15(1) of the Act (United States Code, Title 49, Section 15(1)), which confers upon the Commission the power to order the correction of any unlawfulness which it finds, and, under certain circumstances, to prescribe the manner of correction.

Also involved in these proceedings is the matter of construction of the Resolution of Congress commonly known as the Ramspeck Resolution (54 Stat. 902), the text of which is as follows:

> "(b) The Interstate Commerce Commission is authorized and directed to institute an investigation into the rates on manufactured products, agricultural commodities, and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to Part I of the Interstate Commerce Act, as amended, for the purpose of determining whether said rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other, and to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist: *Provided*, That the Commission in its discretion may confine its investigation to such manufactured products, agricultural commodities, and raw materials, and the rates thereon as shippers thereof may specifically request be included in such investigation."

The Nature of the Case and the Rulings Below

The above-entitled proceedings were instituted in the District Court of the United States for the Northern Dis-

trict of New York (hereinafter called the District Court) pursuant to the provisions of United States Code, Title 28, Sections 41(28), 44, 46 and 47, to enjoin, set aside and forever annul a certain order made and entered by the Interstate Commerce Commission (hereinafter called the Commission) on May 15, 1945, as amended by a supplemental order made and entered by the Commission on October 30, 1945—in a proceeding pending before the Commission entitled—Class Rate Investigation, 1939—and numbered 28,300 in the dockets of the Commission. Said orders, if permitted to become effective, would require increases in all railroad class rates within Official Territory so-called, being generally all that portion of the United States lying east of the Mississippi River and north of the Ohio and Potomac Rivers, and a reduction in all railroad class rates in the remaining portions of the United States east of the Rocky Mountains, as well as a similar reduction in class rates applicable into Official Territory from such other regions.

Plaintiffs in their petitions alleged that the orders entered by the Commission were invalid and unlawful, for the reasons, among others, that the orders were arbitrary and capricious, were based upon an erroneous interpretation of the law, were lacking in support of necessary and adequate preliminary findings of fact, and were inconsistent with and contrary to both the subsidiary findings of fact of the Commission and the evidence. Upon application by the plaintiffs, and after hearing the parties, the District Court entered an interlocutory injunction (Appendix A hereto), restraining enforcement of the Commission's orders pending its final determination of the issues on the merits.

The orders of the Commission which are complained of are *ad interim* orders, so-called, which seek to prescribe the rates to be charged by the carriers, parties respondent

in said proceedings before the Commission, pending completion of other changes which the Commission has found required, but which it has not as yet ordered to be made effective. Thus, in a proceeding entitled—Consolidated Freight Classification—which was consolidated with said Class Rate proceeding and decided at the same time, the Commission found that all freight classifications presently maintained by the carriers are unlawful to the extent that they are not uniform, and it has instructed the carriers to prepare and submit a uniform classification for the Commission's consideration. The Commission has also found, in its Class Rate proceeding, that all class rates in the territory east of the Rocky Mountains are and in the future will be unlawful unless uniform, and it has indicated the uniform scale of rates which it will order to be made effective concurrently with the establishment of the uniform classification hereinbefore mentioned. The *ad interim* orders of the Commission are represented to be merely temporary and partial remedies for the alleged unlawfulness which the Commission has "found".

In its report accompanying its order dated May 15, 1945 (262 I. C. C. 447), the Commission found that all class rates now in effect within and between the several rate territories comprising the area east of the Rocky Mountains are unjust and unreasonable in violation of Sections 1(4) and 1(5) of the Act, and in its supplemental report accompanying its supplemental order dated October 30, 1945 (264 I. C. C. 41), the Commission indicated that it had found Official Territory class rates unjustly and unreasonably low. The Commission further found that, because of the lack of uniformity between Official Territory class rates and interterritorial class rates from other territories into Official Territory, said rates are, and for the future will be, unduly preferential of Official Territory as a whole and the shippers and receivers of freight therein and unduly

prejudicial to Southern, Southwestern and Western Territories and the shippers and receivers of freight therein. On the basis of these so-called ultimate findings, the Commission prescribed rates for the future, which are approximately 15% in excess of present Official Territory class rates and lower, by approximately the same or greater amounts, than present class rates in the other territories, and while not requiring such prescribed rates to be made effective immediately, did order immediate increases approximating 10% in Official Territory class rates and concurrent reductions of approximately 10% in Southern, Southwestern and Western Territory class rates, and in all interterritorial class rates.

The issues raised in the proceedings include the issue of whether the orders of the Commission can be sustained as valid and proper orders, notwithstanding the fact that in connection with the Commission's ultimate finding that Official Territory rates are unreasonably low, the Commission has failed to make any finding of particular facts supporting its so-called ultimate finding of unreasonableness (such as a finding that said rates are noncompensatory or threaten a rate war or will otherwise have harmful effects upon the revenues and transportation efficiency of the carriers maintaining such rates or upon other and competing carriers) and notwithstanding the fact that the record not only precludes the making of any such particular findings, but also, and on the contrary, requires findings, which the Commission has made, which are inconsistent with such required particular findings and said ultimate finding. The further issue is raised as to whether the provisions of the Transportation Act of 1940 so altered the substantive transportation law as to render the Commission's orders valid and lawful, notwithstanding the fact that, in connection with the Commission's ultimate finding that Official Territory class rates and interterritorial

class rates into Official Territory, are, because of their relationship, unduly preferential and prejudicial, the Commission has failed to make any findings of particular facts supporting its so-called ultimate finding of undue preference and prejudice (such as findings that the non-uniform rates are charged, or that if charged, they are charged on the same types of freight, or upon freight of competing shippers, or that injury results from the continued maintenance of such nonuniform rates, or that transportation conditions are uniform and that nonuniformity of rates is therefore not justified) and notwithstanding the further fact that the record not only precludes the making of any such particular findings, but also, and on the contrary, requires findings, which the Commission has made, which are inconsistent with such required particular findings, and with said ultimate finding. A further issue raised is as to whether an order of the Commission directing the removal of undue preference and prejudice must afford the carrier or carriers involved alternative methods of correcting said violation, at least in the absence of a finding, and evidence to support such a finding, that lawful alternative methods do not exist.

The District Court has ruled that the orders of the Commission are not invalid, and has held in substance that while the Commission's ultimate findings are not supported by adequate particular findings of fact, this omission is not fatal; that the Commission having weighed the evidence must be deemed to have decided the issues correctly. On the issue of whether the carriers must be afforded alternatives in any order seeking to correct a Section 3 violation, the Court has ruled that an order entered under Section 15(1) of the Act does not require such alternatives. The decision of the District Court appears as Appendix B hereto.

The decision of the District Court is squarely in conflict with the decisions of the Supreme Court of the United States holding that the validity of an order of the Commission is dependent upon the support which the Commission's findings of particular facts afford the Commission's ultimate findings. Said decision is also squarely in conflict with the decisions of the Supreme Court of the United States with respect to the necessity of alternatives in an order requiring correction of a Section 3 violation.

The Questions Involved Are Substantial

The immediate substantial importance of the issues raised in these proceedings was well stated by the District Court in its final decree herein, wherein this Court concluded, as a matter of law,

> "The decision of these consolidated causes necessarily involves the determination of novel questions of law of great importance to the shippers, the carriers, and the public of this country. There are reasonable and serious doubts as to the determination of these novel and important questions."

These issues, while of great importance in so far as concerns the immediate effect of their determination, are of even more far-reaching significance as concerns the future transportation law generally, and more specifically, the powers and duties of the Commission. The decision of the Commission under review in these proceedings represents a sharp break with the past and an embarkment upon a new course of regulatory practice, based upon the newly-embraced concept of uniformity. Acting under a supposed mandate from Congress to substitute the standard of uniformity for the time-honored standards of legality to which it has adhered for 58 years, the Commission has cast aside all those considerations which have guided its deliberations in the past, and now holds that class rates

must be made uniform virtually throughout the nation, notwithstanding the transportation factors which caused such rates to be established at non-uniform levels originally, which factors still prevail. If the Commission has rightly interpreted (and it is clear that it has not) the action of Congress, and if rate uniformity is to become the new standard of lawfulness, this revolutionary change in the law will have broad repercussive effects upon, not merely the class rates which are in issue in these proceedings, but upon all railroad rates.

Decisions Sustaining Jurisdiction

United States v. *Chicago, Milwaukee & St. Paul Railroad Co.*, 294 U. S. 499 (1935);

Texas & Pacific Railway Co. v. *United States*, 289 U. S. 627 (1933);

Ann Arbor Railroad Co. v. *United States*, 281 U. S. 658 (1930).

Respectfully submitted,

HENRY E. FOLEY

Counsel for
The Honorable Horace A. Hildreth, Governor of the State of Maine;
The Honorable Charles M. Dale, Governor of the State of New Hampshire;
The Honorable Mortimer R. Proctor, Governor of the State of Vermont;
The Honorable Maurice J. Tobin, Governor of the Commonwealth of Massachusetts;
The Honorable John O. Pastore, Governor of the State of Rhode Island; and
The Honorable Raymond E. Baldwin, Governor of the State of Connecticut.

Dated: June 25, 1946.